IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPPEAL FROM LEXINGTON COUNTY
Court of General Sessions

Appellate Case No. 2021-001405

The Honorable Walton J. McLeod, Circuit Court Judge

The State of South Carolina……Respondent,

v.

Shantrez Alejandro Robertson……Appellant.

BRIEF OF APPELLANT

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STATEMENT OF THE CASE

Shantrez Robertson was indicted for one count each of murder and attempted murder, Indictment Nos. 2016-GS-32-00495 and 2016-GS-32-00495. Robertson and co-defendant Donovan Tirell Brannon were tried before the Honorable Walton J. McLeod and a jury between November 15, 2021, through November 19, 2021. It was nearly 5 years before the State brought Robertson to trial for these events. For most of that time, he was out on bond. Robertson was represented by David Mauldin. The State was represented by Sutania Fuller and Robert McNair. The jury found Robertson guilty of both charges. Robertson was sentenced to thirty-two (32) years for murder and thirty (30) years for attempted murder. Each sentence was ordered to run concurrently.

This timely appeal follows.

Relevant facts

Shantrez A. Robertson was tried along with his co-defendant Donovan Tirrell Brannon for the murder of William T. Gantt and the attempted murder of Brandon Jeffery. As discussed in significant detail below, the State presented copious exhibits,

but failed to meet its burden of proving direct or accomplice liability for either charge. Still, Robertson's motion for directed verdict at the end of the State's case was denied.

At trial, the State's evidence failed to provide any indication that Robertson killed William Gantt or attempted to kill Brandon Jeffery. Indeed, the overwhelming evidence presented at trial demonstrated that Robertson was merely present at "The Spot" that night. Neither Robertson's DNA nor his fingerprints were found on the three weapons. ROA 773- 779. Furthermore, the State's own expert conclusively stated that the nine-millimeter weapon placed in evidence, along with two other guns that did not kill Gantt, and the additional projectiles found in Gantt during the autopsy were not fired by any of the guns in evidence. ROA 694-95.

Additionally, while the State provided evidence that the co-defendants communicated earlier that day, were together before going to the Spot, and were present at the Spot, they failed to provide any evidence of a common plan or scheme to commit any of the crimes charged. Yet, the trial court judge charged the jury with the "hand of one, is the hand of all" theory of culpability. ROA 1263.

Consequently, Robertson was found guilty on all charges. A motion for a new trial was denied and Robertson was subsequently sentenced to thirty-two years for murder and thirty years for attempted murder. ROA 1290-91; 1308.

ARGUMENTS

I. The trial court erred in denying Robertson's motion for directed verdict when the evidence adduced at trial was insufficient to establish Robertson's involvement in the crimes charged.

The State presented and introduced numerous exhibits at trial but failed to meet its burden of proving direct or accomplice liability for either charge. Indeed, the evidence was overwhelming insufficient to show that Robertson killed William Gantt and intended to kill Brandon Jeffrey, or that a common plan or scheme existed between Robertson and Brannon. The evidence presented at trial regarding the events of the evening were confusing at best. However, the constant theme surmised from the State's evidence was that Robertson was, at most, merely present at The Spot that evening.

On the night of July 6, 2015, Brandon Jeffrey, William Gantt, Dominique Williamson, O'Brien Gilliam, and Andy Barnes attended a party at a local club called "The Spot". ROA 259-264, 605-06. The night ended in tragedy when William Gantt was shot and killed, and Brandon Jeffrey was shot in the leg. According to Jeffrey, the members of his group arrived at The Spot in two separate vehicles and parked at the top of the hill. ROA 264. Once they made it to the entrance of the club, Gantt was initially denied entry because he had a gun in his possession. ROA 265-609. Andy Barnes, who was with Gantt at the time, testified that Gantt took Barnes' car keys to presumably place the gun back into the car. ROA 609. After a second pat down at the club, they were allowed to enter. ROA 609-610.

As soon as they were inside the club, Jeffrey immediately saw co-defendant Donovan Tirrell Brannon. ROA 268. At some point later in the evening, Jeffrey pulled Gilliam off the dance floor. ROA 267-68. According to Jeffrey, "Red Nose" saw this exchange and went over to Brannon. ROA 268. Jeffrey testified that he believed Red

Nose was the nickname for Shantrez Robertson. ROA 268. However, he admitted that he did not know him, had never heard of him prior to the incident, and had never seen him before that night. ROA 268, 345. Shortly after pulling Gilliam off the dance floor, Brannon came over to him and they "dapped and said what's up", a sign of friendship. ROA 268, 333. Jeffrey testified that even though they decided to leave, there were no altercations in the club. ROA 271-73, 327.

Once they were almost to the vehicles, Jeffrey, Gilliam, and Barnes each heard Brannon say some variation of, "where them pussy motherfuckers at?" ROA 273, 620. Gantt approached Brannon and responded to him. Brannon replied, "not you" and then everyone *heard* shots fired. ROA 275, 328, 642. It is at this point in the State's evidence where the versions of what happened varied significantly.

Witness Testimony

According to Jeffrey, Red Nose was walking up the hill with Brannon. He believed they both had guns in their hands, but he never saw either of them raise or fire a gun. ROA 275-76, 328. When the shots rang out, Jeffrey was shot instantly by an unidentified shooter and crawled under the car.[1] ROA 276, 332.

In contrast, Barnes testified that they were hanging out at the cars waiting on Gilliam when he saw Brannon walking up the hill swinging a gun. ROA 620. Barnes saw two unidentified individuals walking up the hill behind Brannon and he believed

[1] Jeffrey was hit with two bullets, one a through and through, and the other one remained lodged in his femur for five years. Notably, he had the bullet surgically removed prior to the start of the trial. ROA 302. Despite knowing it was evidence, Jeffrey did not request that the bullet be saved, or inform law enforcement of its removal. ROA 330-31.

they were part of another group. ROA 643. The two unidentified individuals behind Brannon were not talking to him, and there was no indication that they were part of the same group or even knew each other. ROA 643. Additionally, he did not see either of them with a gun. ROA 651. According to Barnes, a burgundy Grand Marquis or Crown Vic drove up and boxed them all in. ROA 620-622. Barnes testified that he only saw one person, the driver, in the vehicle and did not know who it was. ROA 622, 650. Moreover, Barnes testified that he did not see anyone shoot because once the shots rang out, he jumped into his car and grabbed his nine-millimeter Jimenez from the glove box and returned fire. ROA 623-25, 642. He then saw Brannon and an unknown individual jump in the backseat of the Grand Marquis and leave. ROA 626. According to Barnes, at least three to four people were in the car when it drove off. ROA 626.

Gilliam provided different testimony to that of Barnes. As he was walking up the hill, he heard Brannon coming out of the club. ROA 812. When he looked back at Brannon, he saw he had a gun in his hand and there were three unidentified individuals with him. ROA 812. Gilliam testified that a white Crown Vic also drove up and two individuals got out of the car, but the driver remained inside the vehicle. ROA 816-17, 821, 830-34. According to Gilliam, there were three people in total inside the car: a driver; a light-skinned male front passenger wearing a white shirt; and a short, dark-skinned male rear passenger. ROA 816, 830. According to Gilliam, when the light-skinned male got out of the car he stumbled over to Brannon. ROA 816.

Moments later he saw that same unidentified individual raise his hand and then Gilliam *heard* shots. ROA 816.

Notably, while Gilliam described the two passengers, he too could not identify anyone at the top of the hill that night other than Brannon. ROA 816-17. Simply put, neither Barnes nor Gilliam identified Robertson at trial, and neither testified to seeing Robertson at the top of the hill or in the car that evening. Jeffrey, on the other hand, was unable to identify the person with Brannon as anything other than Red Nose. In fact, he was unable to pick Robertson out of the police lineup. ROA 345. He stated that he knew everyone in the lineup except for Robertson. ROA 345. Remarkably, Jeffrey did not identify Robertson until a few weeks after the incident when his cousin Aiesha Brannon showed him Facebook pictures of Robertson. ROA 300-01, 345-46. The photographs depicted Robertson wearing white pants with stars, which according to Jeffery appeared to be similar pants worn by Red Nose the night of the shooting. ROA 292, 298-99. Armed with the photos of Robertson, Jeffrey scheduled a meeting with police and used the images on his phone to identify Robertson as the individual with Brannon that night. ROA 300-01.

Once the shooting stopped, Barnes helped Jeffrey into Williamson's car and he stayed with Gantt who was coughing up blood, and barely breathing. ROA 627. Gantt passed away moments later. Tr. 499. While sitting with Gantt, Barnes testified that a stranger came up behind him and said, "let me get them guns." ROA 628. Without hesitation, Barnes handed over his gun to the unknown individual. ROA 628. He then retrieved Gantt's .22 caliber gun off him and handed it him. ROA 628, 645-46.

Remarkably, despite testifying that he gave his keys to Gantt earlier that night so that he could place his .22 caliber gun in the car when the bouncer refused to let them in the club, Gantt had his gun on him when the shooting took place. ROA 645-46. According to Barnes, his personal nine-millimeter Jimenez was the only gun in the glove box. ROA 645-46. Nonetheless, Barnes testified that he was able to retrieve both guns several days later through a friend who knew the individual that took the guns from him. ROA 629. Once he retrieved them, he turned them over to law enforcement. ROA 629.

Another shooting victim, Antonio Stroman, also provided contradictory testimony at trial. ROA 881. In 2015, Stroman drove a Grand Marquis and was at a cookout earlier that day with Robertson and Brannon. ROA 903-04. According to Stroman, he left the cookout and went home with a girl. ROA 904. While he testified that he did not remember seeing Brannon or Robertson inside the Spot that night, he did remember that he was shot in the neck when he was leaving the club, and Brannon was in the backseat of his car. ROA 908-912. While the State provided evidence that he made contradictory statements to police after the shooting, he was unable to recall making the statements. ROA 919-933. However, he testified that while he was in the hospital, police threatened him and tried to promise him with stuff in order to get him to change his statement. ROA 935.

In contrast, Officer Todd Garrick with the Lexington County Sherriff's department testified that he met with Stroman in the emergency room on June 6, 2015. ROA 939. Garrick testified that he did not threaten Stroman, but he admitted

that he warned Stroman that if he failed to tell the truth, he would charge him. ROA 940-46, 952. As a result, Stroman gave three different statements.

According to Garrick, Stroman's first statement indicated that he parked in the lower lot of The Spot and left the club around 2:50am and heard gunshots. ROA 940-41. He was stuck in the dirt, his gas pedal got stuck while trying to leave, and the car shot across the field. The glass broke in his car, and he realized he was shot. Brannon, who was the only person in the car with him, got in the driver's seat and they drove to Creek View Apartments. ROA 940-41.

That same day Stroman gave a second statement that stated that when the initial shots rang out, he was in his car and heard Brannon yell at him "woah"; and both Brannon and Robertson jumped in the car. ROA 942-43. The car was stuck, tires spinning, more shots were fired, the back glass broke, and he was shot in the neck. ROA 942-43. Brannon got in the front seat, and he got in the backseat, but he did not know where Robertson went. ROA 942-43. Brannon then drove him to Creek View Apartments. ROA 942-43.

Stroman's third statement was given to law enforcement two days later. ROA 944-43. In that statement, Stroman maintained as he had in all three statements that he heard gun shots, his car was stuck, glass broke, and he was shot in the neck. ROA 944-46. In this statement, however, he stated that similarly to the second statement, when he was shot, Brannon got in the driver's seat, and he got in the back. However, in this statement Robertson rode with them to Creek View Apartments. ROA 944-46.

Presumably, in an attempt to corroborate this version of the events, the State presented testimony from Demetrich Harris who lived at Creek View Apartments on June 6, 2015. ROA 363. Harris testified that she observed a burgundy Crown Vic drive up and park down past her apartment building. She witnessed four people in the car, and she also heard a female telling them to change their clothes, but she was unable to identify anyone. ROA 363-366. After the Crown Vic parked, another car and an SUV pulled up and she saw people leave in those two vehicles. ROA 368. Notably, she did not testify what time this occurred, and the State did not provide any evidence to corroborate that this occurred after the shooting.

Additional witness testimony confirmed that Robertson was likely at the club that night but still failed to connect him to the incident. Specifically, Corporal Harpalani testified that only Brannon and Stroman were present at Creek View Apartments when he responded to the scene. ROA 372-74. Anija Sales, Stroman's cousin, testified that Robertson was her boyfriend at the time of the incident. ROA 849. Sales testified that she saw Robertson inside the club that evening; however, she did not witness the shooting because she was in her car in the lower lot when the shooting started. ROA 849-50.

In contrast, Jasmine Pringle testified that she was also Robertson's girlfriend in June 2015. ROA 977. Pringle testified that Robertson called her late that night to come pick him up in a country area. ROA 979-80. Pringle testified that she remembered putting in her statement that a guy named "Boosie" was with Robertson that night, but she could not remember if he stayed with them the entire weekend.

ROA 980-82. On the other hand, Adrian Parker testified that she stayed with her cousin Jasmine Pringle that night. ROA 996. While she was getting ready for work that morning Parker witnessed Pringle, Robertson, and another male come home around 5:30am-6:00am. ROA 998-99.

Significantly, there were two Boosie's discussed by witnesses at trial. According to testimony, Stroman and a man identified as Tyrese White were both known as Boosie. ROA 882. Remarkably, a warrant for White was issued only a few weeks prior to trial. ROA 1095. Indeed, despite having five years to develop the case, the State pursued White for his alleged involvement mere weeks before trial. ROA 1095. As a result, the State presented evidence that White was also with Stroman, Brannon, and Robertson that evening and attempted to draw conclusions that he too was involved in the shooting. Nonetheless, akin to Brannon and Robertson, the State failed to provide any direct or circumstantial evidence of his involvement that night. ROA 1018-19, 1174.

Physical Evidence

In addition to confusing and contradictory witness testimony regarding the events of that night, the State's physical evidence also failed to connect Robertson to the shooting. Specifically, Michael Phillips, crime scene investigator with the Lexington County Sherriff's Department, testified that he responded to Creek View Apartments on the night of the shooting where only Brannon was being held. ROA 399. While on the scene, he recovered a nine-millimeter Ruger LC9. ROA 399. The

only other firearms collected in connection with the shooting were the Walther .22 caliber and Jimenez nine-millimeter turned over by Barnes days later. ROA 669.

The State admitted a Facebook photo of Brannon holding a firearm that appeared to be consistent in shape and design to the gun Phillips recovered from Creek View Apartments. ROA 1052-53, However, in addition to finding no gunshot residue on Brannon's hands that night, there were no fingerprints or DNA matching Robertson or Brannon on the gun recovered from Creek View. ROA 400, 496-98, 789-800, 869-70. Additionally, the State's fingerprint expert testified that she found no prints of value on any of the weapons recovered. ROA 771-786. Similarly, the State's DNA expert was unable to find a DNA profile inside Grand Marquis or on the weapons recovered. ROA 789-800.

Notably, the State's forensic firearms expert testified that there were 66 items of evidence relating to firearms analysis. ROA 680. According to her testimony, when analyzing simply the shell casings she believed four firearms were used; however, she testified that if all of the evidence including the projectiles, fragments, and shell casings were included she could not conclusively state how many firearms were involved. ROA 707, 731 Regardless, she was able to match shell casings to an unidentified nine-millimeter, an unidentified .40 caliber, the nine-millimeter Ruger recovered from Creek View and Barnes' nine-millimeter Jimenez. ROA 707.

Significantly, the State's expert testified that the projectiles found in the deceased matched to a nine-millimeter but did not match any of the guns in evidence. ROA 694. Specifically, she testified that the database indicated that the weapon

could be a Ruger, Smith and Wesson, or Fabrique Nationale, but she was unable to determine which of the three would be responsible, if any, for the fatal shot. ROA 694.

The State also attempted to provide evidence of the defendant's location that evening through the testimony of FBI historical cell phone records analyst, Robert Clayton Simmons. ROA 1132. Specifically, Simmons testified that Brannon and Robertson were roughly in the same area after 11:50pm; there was no activity on Pringle's phone between 11:56pm and 4:31am; and White was using the tower at Pringle's residence around 5:56am. ROA 1138, 1150. Regardless, Simmons testified that he was unable to establish a location for Robertson between 1:36am and 4:28am on June 6th. ROA 1174.

The evidence presented at trial firmly established that Robertson did not participate in this shooting. In fact, even though the State provided evidence that Robertson may have owned, and was attempting to sell, a Smith and Wesson nine-millimeter *two days* prior to the shooting, they unequivocally failed to connect that specific gun to Robertson beyond the scope of those messages, and more importantly, they failed to connect that specific gun to the shooting. ROA 1022, 1027, 1032. Indeed, the messages raised, at most, a mere suspicion that Robertson may have been in possession of a gun and was trying to sell it days prior to the shooting at The Spot.

Beyond that, the overwhelming evidence presented at trial indicated that Robertson was simply present at The Spot that night for a party. Undeniably, the evidence established that Robertson communicated with Brannon, White, and Stroman earlier in the day, and was with them at Hill View Truck Stop several hours

prior to the incident. ROA 1012- 19, 1037-38. However, the evidence falls short of evidencing any form of demonstrable plan between the parties. ROA 1012-19.

As established, the State presented copious exhibits and testimony, but undeniably failed to meet its burden of proving direct or accomplice liability for the crimes charged. Still, Robertson's motion for directed verdict was denied by the trial court. ROA 1182. The State's case against Robertson, even when viewed in the light most favorable to the State, did not meet the requisite standard for allowing a case to go to the jury.

It is well established under South Carolina law, that the State, by bringing the case, "assumes the burden of proving that the accused was at the scene of the crime when it happened and that he committed the criminal act." See *State v. Mayfield*, 235 S.C. 11, 109 S.E.2d 716, *cert. denied*, 363 U.S. 846, 80 S.Ct. 1616, 4 L.Ed.2d 1728, *rehearing denied*, 364 U.S. 857, 81 S.Ct. 36, 5 L.Ed.2d 81 (1959); *State v. Bealin*, 201 S.C. 490, 23 S.E.2d 746 (1943). Indeed, the jury weighs the evidence; however, when there is an absence of evidence, it becomes the duty of the trial judge to direct a verdict. *State v. Schrock*, 283 S.C. 129, 134, 322 S.E.2d 450, 452-53 (1984). Evidence must constitute positive proof of facts and circumstances which reasonably tends to prove guilt. *Id.* at 133, 322 S.E.2d at 452 (citing *State v. Manis*, 214 S.C. 99, 51 S.E.2d 370 (1949)); *State v. Bostick*, 392 S.C. 134, 139 (S.C. 2011).

The Supreme Court of South Carolina has repeatedly affirmed the principle that "when the State fails to produce substantial circumstantial evidence that the defendant committed a particular crime, the defendant is entitled to a directed

verdict." *State v. Rothschild*, 351 S.C. 238, 243, 569 S.E.2d 346, 348 (2002); *State v. Odems*, 395 S.C. 582, 586 (S.C. 2012). Moreover, a directed verdict motion should be granted when the evidence "merely raises a suspicion that the accused is guilty." *State v. Irvin*, 270 S.C. 539, 243 S.E.2d 195 (1978).

In *State v. Bostick*, 392 S.C. 134, 141-42, 708 S.E.2d 774, 778 (2011), the Supreme Court of South Carolina held that the evidence only raised a suspicion of guilt. In *State v. Arnold*, 361 S.C. 386, 605 S.E.2d 529 (2004), the South Carolina Supreme court found evidence insufficient when the defendant's fingerprints only raised a suspicion of guilt, and it was not sufficient to uphold the conviction.

In *State v. Odems*, 395 S.C. 582, 720 S.E.2d. 48 (2001) the Supreme Court of South Carolina reversed the conviction based on circumstantial evidence. In *Odems*, the State's case against Petitioner relied primarily on three pieces of circumstantial evidence: "1) the fact that less than ninety minutes after the burglary, police located Petitioner in the getaway car with the burglars and the stolen goods; (2) Petitioner fled from law enforcement; and (3) Petitioner asked an uninvolved person to lie for him." *Id.* at 588.

In *State v. Schrock*, 283 S.C. 129, 134, 332 S.E.2d 450, 452-53, the Supreme Court of South Carolina reversed a conviction where the State did not offer any evidence that the defendant was at the scene and could not definitely testify that the footprints at the scene were that of the defendant.

Here, like *Bostick*, *Odems*, and *Schrock*, the State failed to connect Robertson to the crimes charged and the motion for directed verdict should have been granted.

In fact, in *Bostick*, *Odems*, and *Schrock* the State arguably had more evidence connecting the defendant to the crimes charged than what was provided in the instant case.

Specifically, in the instant case there was an undeniable absence of any direct or circumstantial evidence proving Robertson killed Gantt or attempted to kill Brandon Jeffery. Neither Robertson's DNA nor his fingerprints were found on the three weapons recovered. ROA 773-79. Furthermore, the State's own expert conclusively stated that the nine-millimeter placed in evidence, along with the two other guns did not kill Gantt; and the additional projectiles found in Gantt during the autopsy were not fired by any of the guns in evidence. ROA 694-95.

While the State introduced messages that Robertson was trying to sell a Smith and Wesson nine-millimeter two days prior to the shooting, they failed to connect that firearm beyond the scope of the messages. At best, the State presented a mere suspicion that Robertson was attempting to sell a gun, not that he had one with him that night, or that it was involved in the shooting. Lastly, the only consistent testimony between the State's key witnesses was that: 1) Brannon, not Robertson, was walking up the hill; 2) Brannon, not Robertson, was looking for someone other than the Gantt; and 3) they heard gun shots but did not see anyone fire the first shot. ROA 273-276, 328, 620, 623-25, 642, 812, 816.

As to the attempted murder of Jeffrey, for the same reasons, the court should have granted the directed verdict. The record lacks any evidence reflecting an attempt to kill Jeffrey. On the contrary, Jeffrey testified that he did not know

Robertson, but he and Brannon "dapped" in the club that night. ROA 268, 333. He further testified that there were no altercations in the club. ROA 271-73, 327. Simply put, there was no evidence of any attempt to kill Jeffrey. Accordingly, the State's case against Robertson for the murder of Gantt and attempted murder of Jeffery under a direct liability theory failed and the directed verdict should have granted.

Similarly, the State's case against Robertson under a "hand of one is the hand of all theory" also fails and the directed verdict should have been granted. The overwhelming evidence presented at trial demonstrated that Robertson was merely present at The Spot that night. In fact, the record is devoid of any evidence, direct or circumstantial, that there was a common plan or scheme between the co-defendants to kill Gantt and attempt to kill Jeffrey. The evidence indisputably established that Robertson communicated with Brannon, White, and Stroman earlier in the day, and was with them at Hill View Truck Stop several hours prior to the incident. ROA 1012-19, 1037-38. However, this is where the connection stops.

The witness testimony is undeniably inconsistent and categorically fails to corroborate the events of that night. Again, the only consistent testimony between the witnesses was that Brannon was walking up the hill looking for someone other than Gantt, and they heard the shots but did not see who took the first shot. ROA 273-76, 328, 620, 623-25, 642, 812, 816. While they each testified that they saw Brannon with other individuals, they could not identify anyone. Neither Barnes nor Gilliam identified Robertson at trial, and neither testified to seeing Robertson at the top of the hill or in the car that evening. Jeffrey, on the other hand, was unable to

identify the person with Brannon as anything other than Red Nose and was unable to pick Robertson out of the police lineup. ROA 345. Jeffrey did not identify Robertson until several weeks after the incident when his cousin showed him Facebook pictures of Robertson. ROA 300-01, 345-46.

Even with Jeffery's questionable identification, it suggests a mere suspicion that Robertson may have been present at the top of the hill, not that he had a common plan or scheme with Brannon to kill Gantt or attempt to kill Jeffrey. Undeniably, the State's evidence falls short of establishing any form of demonstrable plan between the parties. Accordingly, the State's evidence under an "hand of one is the hand of all theory" rises at most to a mere suspicion.

The State failed to meet their burden of proving direct or accomplice liability for the crimes charged. At best they only raised a mere suspicion of Robertson's involvement. The law is clear: even in the light viewed most favorable to the State, when the evidence "merely raises a suspicion" that Robertson was involved, a motion for directed verdict should have been granted. *State v. Irvin*, 270 S.C. 539, 243 S.E.2d 195 (1978).

Respectfully, this Court should enter a judgment of acquittal because the evidence offered by the State was insufficient to support Robertson's conviction and sentence.

II. The trial court judge erred when she allowed the charge of "hand of one is the hand of all" because the State's evidence to support the jury charge was insufficient to warrant the charge.

As discussed above, even though the State provided evidence that the co-defendants communicated earlier that day, were together before going to The Spot, and were present at The Spot, they failed to provide any evidence of a common plan or scheme to commit any of the crimes charged. Yet, the trial court judge charged the jury with the "hand of one, is the hand of all." ROA 1262.

"An appellate court will not reverse the trial [court]'s decision regarding a jury charge absent an abuse of discretion." *State v. Marin*, 415 S.C. 475, 482, 783 S.E.2d 808, 812 (2016) (quoting *State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010)). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006).

"The doctrine of accomplice liability arises from the theory that the hand of one is the hand of all." *State v. Reid*, 408 S.C. 461, 472, 758 S.E.2d 904, 910 (2014) (internal quotation marks omitted). Under this theory, "a person must personally commit the crime or be present at the scene of the crime and intentionally, or through a common design, aid, abet, or assist in the commission of that crime through some overt act." *State v. Condrey*, 349 S.C. 184, 194, 562 S.E.2d 320, 325 (2002) (quoting *State v. Langley*, 334 S.C. 643, 648-49, 515 S.E.2d 98, 101 (1999)). The State must prove beyond a reasonable doubt that the parties agreed to "achieve an illegal purpose, thereby establishing presence by pre-arrangement." *State v. Gibson*, 390 S.C. 347, 354, 701 S.E.2d 766, 770 (2010). While the State is not required to show a formal express agreement, they must prove the same by circumstantial evidence and

the conduct of the parties. *State v. Gibson*, 390 S.C. 347, 354, 701 S.E.2d 766, 770 (2010).

However, mere presence and prior knowledge that a crime was going to be committed, without more, is insufficient to constitute guilt. *State v. Thompson*, 374 S.C. 257, 262, 647 S.E.2d 702, 705 (2007) (quoting *State v. Condrey*, 349 S.C. 184, 194, 562 S.E.2d 320, 324 (2002). The South Carolina Supreme court has explained that, in order for a defendant to have the requisite knowledge: "the alleged accomplice must have acted with the intention of encouraging and abetting the commission of the homicide, or at least that the commission of the murder by the principal must have been a reasonably foreseeable consequence of the defendant's actions." *Mattison*, 388 S.C. at 484, 697 S.E.2d at 586 (quoting 40 Am. Jur. 2d Homicide § 26 (2010) (emphasis added).

For an accomplice liability instruction to be warranted, the evidence must be "equivocal on some integral fact and the jury [must have] been presented with evidence upon which it could rely to find the existence or nonexistence of that fact." *Barber v. State*, 393 S.C. 232, 236, 712 S.E.2d 436, 439 (2011); *State v. Washington*, 431 S.C. 394, 407, 848 S.E.2d 779 (2020).

In *Wilds v. State*, 407 S.C. 432, 440, 756 S.E.2d 387, 391 (2014), this Court affirmed the post-conviction relief court's grant of relief on the issue of accomplice liability. In *Wilds*, this Court found the post-conviction relief court "correctly determined the trial court erred in charging accomplice liability because neither

party presented evidence that anyone besides the defendant was the shooter." *Id.* at 440, 756 S.E.2d at 791.

In *State v. Washington*, 431 S.C. 394, 407, 848 S.E.2d 779 (2020), the South Carolina Supreme Court held that the trial court's accomplice liability instruction prejudiced Petitioner. The Court reasoned that the evidence that Petitioner shot the victim was underwhelming, as several witnesses testified that he was unarmed and was not in the immediate area where the shooting occurred. *Id.*

In *State v. Campbell*, 5885, at *10 (S.C. Ct. App. Dec. 22, 2021), this Court held that akin to *Washington* and *Wilds* the trial court erred by charging the jury on accomplice liability because neither party presented evidence that the defendants had joined together in a common plan or scheme to carry out the shooting.

In the instant case, similar to the aforementioned cases, the instruction was unwarranted because as discussed in significant detail in Section I *supra*, the State failed to present evidence of a pre-arranged common design or purpose between Robertson and his co-defendant for some illegal purpose; that Robertson knowingly participated in the alleged crimes; that he manifested the requisite knowledge that a crime was being committed; and that what happened at the Spot was a natural and probable consequence.

Jeffery is the only person who testified that Robertson may have been at the top of the hill that night. However, his identification of Robertson was questionable at best, and there existed no other evidence placing Robertson with Brannon when the shooting occurred. The only evidence connecting Robertson to the scene of the

crime was being with co-defendant hours before heading to the club and being inside the club that night. ROA 1012-19, 1037-38.

Even assuming *arguendo* that Robertson was at the top of the hill, no one saw Robertson or Brannon pull a trigger and no one retrieved a weapon from Robertson. Further, Robertson's fingerprints nor his DNA were found on the three weapons recovered, and none of the weapons recovered that night matched the bullets found in the deceased. ROA 694-95. In fact, the overwhelming evidence presented at trial indicated that Robertson was simply present at The Spot that night for a party.

The law is clear, being merely present at the scene of the crime does not make Robertson guilty of the principal of any crime therein. *State v. Thompson*, 374 S.C. 257, 262, 647 S.E.2d 702, 705 (2007) (quoting *State v. Condrey*, 349 S.C. 184, 194, 562 S.E.2d 320, 324 (2002). The evidence presented at trial does not rise to the level of warranting an accomplice liability charge. The State was required to provide equivocal evidence that Robertson aided, abetted, conspired, and planned those actions with co-defendants. They categorically failed.

Accordingly, the hand of one is the hand of all charge should not have been sent to the jury as this charge was prejudicial. The trial court judge abused his discretion when he charged the jury with the hand of one is the hand of all because the State's evidence to support the jury charge was insufficient. Respectfully, this Court should reverse Robertson's convictions and sentence and remand for a new trial.

CONCLUSION

This Court should vacate Appellant's convictions and sentence.

Respectfully submitted,

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September 22, 2022.

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N THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPPEAL FROM LEXINGTON COUNTY
Court of General Sessions

Appellate Case No. 2021-001405

The Honorable Walton J. McLeod, Circuit Court Judge

The State of South Carolina……Respondent,

v.

Shantrez Alejandro Robertson……Appellant.

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

/s/ Elizabeth Franklin-Best

September 22, 2022.